

April 16, 1942

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W. R. Hutchins, State Engineer  
Arizona Highway Department  
Phoenix, Arizona

Attention B. H. McAhren, Superintendent  
Motor Vehicle Division

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**ARIZONA ATTORNEY GENERAL**

**SUBJECT: COLLECTION OF GROSS RECEIPTS  
TAX ON CITY BUSES.**

Gentlemen:

This is to comply with the request of the Commission for a written opinion on the above subject, submitted through Mr. McAhren. I have frequently discussed this subject with Mr. McAhren and with the Menderson Bus Lines, who appear to be the complaining party, and they are well acquainted with my views. However, I have no objection to putting these views in writing as a public record.

The City of Phoenix owns and operates bus lines and street car lines for compensation over the streets of Phoenix. The Menderson Bus Lines are competitors and operate over certain Phoenix streets designated by the city authorities.

The City Bus Lines go beyond the city limits in some instances and pick up passengers and collect fares. This fact we consider does not alter the situation: City of Phoenix vs. Wright - 80 Pac. 2nd, 390.

The first question to consider is whether or not the gross receipts of a City Bus Line are taxable under our law. This is a subject which the court must necessarily decide finally and I can only give you my present impression. The Menderson Bus Lines are apparently relying upon City of Phoenix vs. State - 85 Pac. 2nd, 56, where our court holds that when municipalities become competitors with private enterprises they are subject to the same liabilities as are the private concerns with whom they compete. This is a somewhat loose statement applicable to the case in which the statement was made but we do not believe that it applies to cities owning and operating bus lines for the use of the public. The case last referred to is one arising out of the state sales tax. Under the sales tax law sales of products by any dealer, or other person, are taxable. The law does not exclude municipalities selling products such as water, but we believe specifically - by implication at least - includes them. The law further provides a system of licensing those who wish to engage in the business of selling, and the city takes out its license the same as the mercantile concern.

On the other hand under the gross receipts carrier tax the city operating a bus line is not directly, or by implication, charged with the payment of the tax. The city further is not allowed to take out a certificate of convenience and necessity from the Corporation Commission, but our Supreme Court has said that the Corporation Commission has no jurisdiction over the city in its bus line operations and that the city in such work is not a public utility: Menderson vs. City of Phoenix, 75 Pac. 2nd, 322.

Our law imposes a license tax upon the gross receipts of every common motor carrier of passengers derived from his operations within the State. A common motor carrier of passengers is any person or corporation engaged in the transportation on any public highway by motor vehicle of passengers for compensation as a common carrier. It further provides that no such common motor carrier of passengers shall operate over the highways of the State until it has applied to the Corporation Commission and secured a certificate of convenience and necessity.

Conceding that a city bus line is a common motor carrier of passengers for compensation it nevertheless is not subject to the law requiring it to obtain a certificate of convenience and necessity for the simple reason there is no agency of the State authorized by law to issue to it such a certificate. Hence, if we strictly interpret the law and say that a city operating a bus line is a common motor carrier of passengers for compensation the city cannot operate such bus line at all, for the reason it has no certificate of convenience and necessity and cannot secure one.

The right of the city to operate a bus line, a light plant, water works, or the like, has been given to cities by the constitution and confirmed by the statutes of the state. One of the early constitutional amendments in 1912 was to extend the right to municipalities to engage in industrial pursuits. The question then arises whether the license tax on gross receipts could be intended to apply to cities operating bus lines and if so how is the tax to be collected and who is the proper officer or State Agency charged with its collection?

The Corporation Commission determines who are carriers and issues certificates of convenience and necessity to them and advises the Motor Vehicle Superintendent the names of those carriers who have been certified by it. The carriers then pay the Superintendent the amount of the tax due and he immediately deposits the proceeds with the State Treasurer, who enters it to the account of the State Highway fund.

Naturally no license tax on gross receipts is imposed upon any carrier who has not been given a certificate of convenience and necessity for the manifest reason that if such carrier operates within the state without the certificate his is an illegal operation. With the City, however, the legality of its operations of a bus line is, we think, fully settled.

The Vehicle Superintendent, upon receipt of the report of the Corporation Commission, proceeds to collect the tax - or rather, to receive it from the certified carriers. He has no way of knowing whether or not there are other carriers who are operating who are not certified and who are not paying the license tax. He does, however, in the general operation of the Vehicle Division, investigate illegal operations and reports them to the Corporation Commission, who have full power to bring the offending carriers before them and cause them to be punished or their operations stopped. This applies only to common motor carrier operations excepting those of a municipality operating its own bus lines. We are also not considering the city as a common motor carrier of property, since that question has not yet arisen.

If a common motor carrier of passengers fails to make his required reports or pay his license tax the vehicle superintendent has power to determine the amount of the tax as best he can and assess it, together with a 25% penalty against the offending carrier. He then sets a date for hearing upon the matter and notifies the carrier, who can appear and defend. We must, at all times however, remember that this proceeding applies only to carriers who have been certificated by the Corporation Commission and reported back to the vehicle superintendent. Hence the superintendent has no apparent authority to ascertain the gross receipts of the city operating a bus line, nor to impose a penalty or compel a hearing.

When the certificated carrier fails to make his report or refuses to pay his tax the matter is submitted to the Corporation Commission by the superintendent and the Corporation Commission revokes the carrier's certificate of convenience and necessity. This cannot be done as against a city operating a bus line for the reason the city has no certificate and cannot secure one.

For the foregoing reasons I am very much of the opinion that the provisions of the license tax upon the gross receipts of common motor carriers of passengers was not intended to apply to cities owning and operating their own bus lines.

The tax, as finally fixed, becomes a lien upon the property of the carrier. It becomes a debt due the State. It is not due the Highway Department, Motor Vehicle Division, or Motor Vehicle Superintendent, but is due the State and goes into a State fund, although that fund is allocated to highways.

If suit is to be brought upon the debt due the State it would appear to be the duty of the constitutional legal representative of the State to bring such action. If he refuses to do so any citizen demanding the action can bring the suit in the name of the State. I think, however, such citizen would be required to show some interest in the controversy. The property taxpayer has no such interest for the reason that the collection of the tax does not lessen his tax burden the slightest, nor the failure to collect add to his burden. The same would be true of Menderson Bus Lines. They have no interest in the controversy other than that of a competitor of the city. Any proceeding upon their part, whether so intended or not, would have the effect merely of hampering a competitor and possibly defeating his operations as such competitor.

However, it may be, the statute gives no authority to the Vehicle Superintendent, to the State Engineer, nor to the Highway Commission to bring such action in the name of the State (in whose name it must be brought). The only times these officers can bring action in the name of the State is where the statute specifically directs them so to do, as where it directs the State Engineer to institute condemnation proceedings and the like. I am satisfied that if there is a remedy available to Menderson Bus Lines it is fully within their hands as an aggrieved party. The quarrel seems to be between the Menderson Bus Lines and the City Bus Lines, in which quarrel I cannot see where the Highway Commission, State Engineer, or Vehicle Superintendent have the slightest legal interest.

W. R. Hutchins  
Att: B. H. McAhren

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For the foregoing reasons I have, at all times, in the past several years, insisted that the Vehicle Superintendent should not inject his office into the controversy but should let the aggrieved party pursue his own remedy.

Very truly yours,

JOE CONWAY  
ATTORNEY GENERAL

*A. R. Lynch*

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ASSISTANT ATTORNEY GENERAL

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